

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ROOT, INC., ET AL., )  
 )  
 PLAINTIFFS, ) CASE NO. 2:23-cv-512  
 )  
 vs. )  
 )  
 BRINSON CALEB SILVER, ET AL., )  
 )  
 DEFENDANTS. )  
 )  
 \_\_\_\_\_ )

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS  
BEFORE THE HONORABLE SARAH D. MORRISON  
WEDNESDAY, FEBRUARY 14, 2024; 10:01 A.M.  
COLUMBUS, OHIO

FOR THE RECEIVER JERRY E. PEER, JR.:

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(Appearances continued, next page)

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Proceedings recorded by mechanical stenography, transcript  
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- - -

Wednesday Morning Session

February 14, 2024

- - -

*The following proceeding held in chambers.*

- - -

THE COURT: Good morning. Good morning, everyone.

The gang is all here in Root, et al., versus B.C. Silver,  
et al.

We'll begin by doing appearances. Starting with counsel  
for the receiver.

Of course, we have the receiver, Mr. Peer.

MR. PEER: Good morning, Your Honor. Jerry Peer, the  
receiver.

MR. GAJARY: Istvan Gajary with the receiver here.

MR. PETERSON: Good morning, Judge. Greg Peterson  
with Jerry Peer.

THE COURT: Good morning.

And then for the Root parties?

MR. KLOSS: Bill Kloss for the Root parties.

MS. ALEXANDER: Liz Alexander.

MS. SAALMAN: Grace Saalman.

THE COURT: Great. And then we do have -- we -- just  
for the record, Mr. Silver is not here, nor are any of his  
entities, which we will talk about that in just a moment, and  
we do have people here for Mr. Campbell and the Quantasy

1 entities, though.

2 MR. RIDINGS: Yes, Your Honor. Matt Ridings for the  
3 Quantasy entities and Mr. Campbell.

4 THE COURT: Great.

5 MR. KING: Jamar King for the Quantasy entities and  
6 Mr. Campbell.

7 THE COURT: Great. And we have people on the  
8 telephone. Who do we have on the phone?

9 MR. EPSTEIN: Good morning, Your Honor. This is  
10 Josh Epstein of Davis & Gilbert, LLP. I'm co-counsel for the  
11 Quantasy parties and Mr. Campbell.

12 THE COURT: Okay.

13 MS. MEYER: And Joan Meyer from Thompson Hine.

14 THE COURT: Okay. Great. Thank you.

15 All right. Well, you know, we hadn't all been together  
16 for quite a while. I know that you've been talking to the  
17 magistrate judge.

18 We've had a lot of motions and papers and things going  
19 back and forth.

20 So I -- I thought it would be a good time to bring  
21 everyone together and really wanted to start with you,  
22 Mr. Peer, in terms of we've gotten your reports. We know you  
23 filed some motions. You are selling property. That's great.

24 But can you just give us a high level of where we are,  
25 and what do you think your next steps are?

1 MR. PEER: Absolutely. Thank you, Your Honor.

2 So, from here going forward, our -- our last remaining  
3 responsibilities or duties or what I would say is on our  
4 checklist is to get this Bayshore property closed.

5 This is the property down in Miami that had more or less  
6 been gutted down to the studs.

7 It was originally believed to be worth roughly  
8 3.7 million in its current state, could be even up to and north  
9 of 5.5 if it was renovated.

10 However, the mortgagee for that property had filed a  
11 foreclosure action, obtained relief from stay in this case, and  
12 was intending to press forward on the foreclosure.

13 For that reason, we obviously don't have enough time to  
14 renovate that property and try to realize the additional  
15 proceeds that may -- may come as a -- as a sale for a fully  
16 renovated property.

17 So, we entered into a contract for 3.7 million. We are  
18 currently scheduled to close on or before February 28th or  
19 before. We're aiming and we're hopeful that it will be before.

20 Thank you, Your Honor, for the order that came through  
21 last night.

22 So, the wheels are in motion, and everybody is pushing  
23 forward to try to get it closed as soon as possible.

24 THE COURT: Okay. Let me stop you on that, just  
25 because I know there's an outstanding motion about like

1 abandoning -- there's some personal property that was left at  
2 that property.

3 We do -- we did send out the notice for the expedited  
4 briefing schedule.

5 I'm going to guess that none of the represented parties  
6 care about any personal property left in the property.

7 Is there anything that we ought to be worried about or  
8 anything of value?

9 MR. PEER: No, Your Honor.

10 There is nothing -- there was one room that was kind of  
11 just stuffed full of shoes, clothing, suitcases, just  
12 miscellaneous items, none of which I could walk into a thrift  
13 store and get anything for.

14 THE COURT: Okay. Well, I know those tennis shoes now  
15 have a great secondary market.

16 MR. PEER: Well, and Mr. Silver had a -- a lot of  
17 tennis shoes but, unfortunately, on the -- on the open market,  
18 in a liquidation value, not --

19 THE COURT: Okay.

20 MR. PEER: -- not really worth anything.

21 THE COURT: All right. Great. I just wanted to make  
22 sure. Thank you.

23 MR. PEER: Yeah.

24 In addition to the Bayshore property, we have the Walnut  
25 property.

1           Our realtor that is out in California and our auctioneer  
2           are working closely together to get that property ready.

3           That is the house that Ms. Laurie Mannette was residing  
4           in with the children. They have since vacated; however, she  
5           did leave quite a bit of trash behind.

6           I've confirmed with her that that can all be disposed  
7           of. I expect that to be removed today.

8           The landscaping will also commence today, just to make  
9           the house look a little bit nicer for the photos for the  
10          auction.

11          I'm hoping that we have that closed in the next 60 days.

12          With any luck, we'll get a bid that we can all live  
13          with. It is subject to our approval, of course, and I'd reach  
14          out to everyone to make sure that everybody can live with  
15          whatever that price is.

16          We weren't as successful on Ramona's. We had hoped.  
17          But when you look at the stats and the numbers, it's the best  
18          we could expect to get.

19          In addition to those two properties, there is still the  
20          Mercedes. The Court has granted us to sell that for \$14,200.  
21          I expect that to occur this week. We'll get that done.

22          Our realtor out there is being very helpful. He's  
23          definitely going above and beyond what we've hired him to do,  
24          and taking care of the Mercedes is one of those things.

25          The last potential remaining asset out there is this

1 Jakarta bank -- bank account. Unfortunately -- and I am all  
2 ears if anyone in this room or outside this room has a way of  
3 getting information from a bank in Jakarta.

4 Mr. Silver assures us that those funds were depleted to  
5 zero or nearly zero for his, quote, unquote, living expenses  
6 while he was in Indonesia.

7 We have absolutely no way to confirm that.

8 From that point on, the only thing, I think, we have got  
9 left to do to wrap this up is to take care of the  
10 administrative tax returns, get them prepared, and then we  
11 would be moving the Court to terminate the receivership.

12 THE COURT: With regard to that Jakarta bank account,  
13 is there an opportunity -- and I probably look more to  
14 Mr. Peterson -- as part of the criminal case, to have  
15 Judge Marbley order him to do something with that account?

16 MR. PETERSON: We could do that. We have met with  
17 Mr. Silver on several occasions.

18 I mean, we had a -- we went to Butler where he was being  
19 held, had a pretty open conversation.

20 I made it very, very clear to him that it was in his  
21 best interests, both criminally and civilly, in this case, to  
22 be forthright with us.

23 As -- I didn't have any Bibles to stack up in front of  
24 him, but he assures us that the money is gone. He says there's  
25 nothing there.



1           We certainly will pursue that with Mr. Templeton in the  
2 criminal case, and Phil is aware of the importance of that and  
3 the answer to that question.

4           And from my sort of heart-to-heart conversations with  
5 Phil, he doesn't believe there's any money.

6           Our ability to get Jakarta -- we did issue them a  
7 subpoena.

8           MR. GAJARY: We did, which came back.

9           MR. PETERSON: They -- they don't really -- they --  
10 they were not very intimidated by our subpoena, Judge.

11           So, we will continue to pursue that, and certainly the  
12 criminal case offers some leverage that we don't necessarily  
13 have over him.

14           THE COURT: Do you think if I went to Jakarta and,  
15 like, personally served it?

16           (Laughter.)

17           MR. PETERSON: And handed it to them, Judge.

18           MR. KLOSS: Well, we've come this far. It -- it  
19 strikes me -- my idea would be ordering Silver to do whatever  
20 he needs to do to access the account.

21           I'm not really in a -- I don't want to be a pain in the  
22 neck, but he also didn't have three houses.

23           He also didn't have a variety of things along the way,  
24 so he has got to have access to the account in some fashion.  
25 It would --

1 THE COURT: I agree, and that's actually maybe  
2 indirectly what I was trying to say, where there may be -- in  
3 the criminal case, there might be still that hammer of "I've  
4 still got to sentence you."

5 MR. PETERSON: Yes, ma'am.

6 THE COURT: And so, whether it's me having a  
7 heart-to-heart with him or Marbley for the criminal case, I  
8 kind of think the chief now has more leverage with B.C. Silver  
9 than I do.

10 MR. PETERSON: Yes, ma'am. We will absolutely tie up  
11 that end --

12 THE COURT: Okay.

13 MR. PETERSON: -- before we terminate the  
14 receivership. Yes, ma'am.

15 THE COURT: Okay. Great.

16 Any other thoughts on that issue or questions for the  
17 receiver?

18 I'll start with you, Mr. Kloss.

19 MR. KLOSS: No. I think that that -- you know, the  
20 receiver has done a terrific job.

21 Obviously, we're interested in getting it wrapped up,  
22 and that would be nice to get that final piece of the puzzle.

23 I mean, he somehow -- he had to have access to it  
24 somehow, so -- whether he has to sign a document or wire them  
25 something. So I think that's it.

1 THE COURT: Okay. All right. Mr. Ridings?

2 MR. RIDINGS: There was one other bank account, I  
3 thought. I -- I --

4 MR. KING: Evolve.

5 MR. RIDINGS: Evolve. Yeah. What is -- did you  
6 discuss the status of that? I'm sorry if I missed it.

7 MR. PEER: I did not mention that. I know that we had  
8 sent them a subpoena.

9 MR. GAJARY: Yeah. We did have a subpoena to them.  
10 They -- they have not responded. I think we need to follow up  
11 on that one.

12 There is about \$14,000 there. We were able to trace, at  
13 least, the wires going out.

14 About \$52,000 went to the bank in Jakarta -- which we  
15 did issue them a subpoena. That got sent back to us for  
16 noncompliance according to their laws.

17 The one with Evolve Bank was around \$14,000. We just  
18 need to follow up on that to figure out what happened with that  
19 money.

20 MR. RIDINGS: All right.

21 THE COURT: All right. I don't hear any further  
22 questions, but thank you all. We appreciate it.

23 I know you've been very diligent and had some  
24 interesting ventures trying to get your arms around this  
25 estate.

1           So, I'm pretty pleased with where we've ended up, so  
2     thank you.

3           MR. PEER: Thank you, Your Honor.

4           THE COURT: In addition, I know that Root had some  
5     specific things that they wanted to talk about, one of which  
6     was also at the top of my list, and that does deal with the  
7     Silver entities.

8           Of course, yesterday was the deadline for Mr. Silver's  
9     corporate entities to retain counsel. They have not.

10          And so, my request would be then for Root to file a  
11     motion for entry of default based on their failure to defend.

12          I know also there's now cross-claims. I didn't  
13     double-check. Are the cross-claims just against Mr. Silver, or  
14     are they against his companies as well?

15          MR. RIDINGS: Just against Mr. Silver personally,  
16     Your Honor.

17          THE COURT: Okay. Okay. And his answer date has not  
18     run yet.

19          MR. RIDINGS: Has not yet come.

20          THE COURT: Okay.

21          MR. RIDINGS: Correct.

22          THE COURT: That does, though, lead me then to kind  
23     of what -- what Mr. Silver is doing.

24          I know he is still housed, a guest of us, in  
25     Butler County.

1 MR. PETERSON: Yes, ma'am.

2 THE COURT: Have you -- are you done with him from the  
3 receiver's standpoint?

4 Is there ongoing discussions with him?

5 MR. PETERSON: One of the interesting sort of threads  
6 we pulled was this videotaped notarization service that he had  
7 used, and we issued them a subpoena.

8 I believe there were about 16 different occasions where  
9 he hired them to notarize documents.

10 This was during COVID. And so it was -- it was a whole  
11 video process.

12 I've actually spoken with -- what led us to that thread,  
13 if you will recall, Judge, the Happy Jewelers and the watches  
14 and all of that.

15 He used that to submit a statement to Happy Jewelers.  
16 He used that video.

17 And I spoke with the notary, I guess it is. It was out  
18 in Las Vegas. And he sent us the video. We had the whole  
19 thing.

20 So that led us to a -- that gave us a couple of other  
21 follow-ups with him.

22 Other than the Jakarta and how we wrap that up -- which  
23 he has said to us doesn't exist but I -- you know, with the  
24 appropriate leverage, maybe he would change his answer, or we  
25 can get his representation more formalized, but other than --

1 other than that, I don't know that there's any reason for us to  
2 have any more contact with him.

3 I would say this: For whatever it's worth, after  
4 Mr. Templeton got involved, he was willing to sit down with us  
5 as many times as we wanted.

6 I mean, he never -- I don't know -- you know, whether  
7 he's telling the truth or not, he did answer all of our  
8 questions.

9 There was no point at which where he said: "I'm not  
10 going to talk about that."

11 So, I don't know of any reason, really, for us to reach  
12 back out to him unless this Jakarta issue --

13 THE COURT: Okay.

14 MR. PETERSON: -- leads us in another direction.

15 THE COURT: All right. Because I -- because I know  
16 there's been discovery requests from the Root companies.

17 Have you served discovery as well, Mr. Ridings?

18 MR. RIDINGS: Yes, Your Honor.

19 We served discovery during the expedited discovery  
20 period, now near a year ago.

21 Those -- we have not received responses to any of those  
22 discovery responses.

23 THE COURT: I know you haven't either.

24 MR. KLOSS: Not entirely correct.

25 THE COURT: Okay.

1 MR. KLOSS: We've received -- technically, we received  
2 written responses, which in many instances were not responsive.

3 But in -- in many other instances, they refer to the  
4 forthcoming document production, which we have never gotten.

5 THE COURT: Okay.

6 MR. KLOSS: So, I don't think he's -- there was --  
7 there was a document served that said they were answers and  
8 objections, but we haven't gotten anything further.

9 And, more importantly, we have no documents from him,  
10 and he's never -- he's also -- I don't mean to harp on this,  
11 but he's also never answered the second amended complaint.

12 I know he answered the first so --

13 THE COURT: Right. Well, and -- and the reason I ask  
14 is I do want to -- yeah, I feel like I want to continue to get  
15 his cooperation on the -- on the receiver piece; and to the  
16 extent he's cooperating with the receiver, in my mind, he is  
17 otherwise defending as required by Rule 55.

18 That's why I started with the question to Mr. Peterson  
19 about is he still cooperating? And he at least normally is.

20 So, I'm reluctant to talk about an entry of default  
21 against Mr. Silver at least while we're trying to get this  
22 done, because he is cooperating, and that, in my mind, is in  
23 part defending against claims and cross-claims.

24 MR. PETERSON: It is interesting, Judge, because when  
25 Peter Glenn-Applegate, the U.S. attorney who is handling it,

1 with -- with -- not to get into the weeds, but as the Court is  
2 well aware, the -- the sentencing guidelines are very heavily  
3 driven by the loss calculation.

4 THE COURT: Yeah.

5 MR. PETERSON: And so, they have tiered amounts.

6 And what Pete was sort of like, look, if we get over  
7 this tier, we're never going to get to the next tier, so this  
8 is where you fall.

9 So they pushed him to get specificity in that regard but  
10 not down to a dollar figure like I can send -- tell you where  
11 the money is.

12 THE COURT: Right.

13 MR. PETERSON: You know, so he had incentive to keep  
14 the number low on the guideline calculation, but then he also  
15 had an incentive to try to find that money on a restitution  
16 order or anything else from Judge Marbley.

17 So, there's kind of cross-purposes there.

18 He's cooperative in the sense that he never told us that  
19 he wouldn't talk to us.

20 THE COURT: All right.

21 MR. PETERSON: I think all three of us believe he is  
22 maybe 75 percent, 80 percent -- I think he's probably as honest  
23 as he is capable of being.

24 MR. PEER: And I don't think he told us anything in  
25 that meeting that we didn't already know.



1 MR. PETERSON: Right. He did not -- when -- for  
2 example, when we found the third house, he never offered  
3 anything like that after we began engaging with him.

4 It was more of a -- you had ordered him to cooperate.  
5 He was doing that because he had the contempt issue that he was  
6 trying to deal with at the same time.

7 THE COURT: Well, here would be my suggestion, but I'm  
8 happy to hear any other alternatives, and that is, let's pin  
9 down the Jakarta bank issue just to make sure that there's not  
10 money there, and I'll -- I'll talk with the receiver offline.

11 We can maybe coordinate with the criminal case about  
12 what the best way to get an order on for him to provide, sit  
13 down with you, whatever it takes, to get access to that Jakarta  
14 account. He's got to be able to access it somehow, one would  
15 think.

16 MR. PETERSON: One would think.

17 THE COURT: And maybe we go back to the contempt  
18 route. I don't know. I don't know what kind of hammer that is  
19 over him at this point given the criminal proceedings, but  
20 let's try to pin that down, because I would like -- I would  
21 like to close that loop and see if there's any -- any other  
22 cash out there.

23 MR. PETERSON: And it's an interesting kind of  
24 interpretation, Judge, if I might, is if he's being held on the  
25 contempt, that's dead time, so he isn't getting credit towards

1 his ultimate criminal sentence.

2 So the longer that that process will play itself out and  
3 he's under contempt orders, he isn't getting credit towards his  
4 ultimate criminal sentence --

5 THE COURT: Okay.

6 MR. PETERSON: -- which may be some leverage depending  
7 on how long it takes.

8 THE COURT: Right. And so that is -- that would be an  
9 incentive for him to cooperate.

10 MR. PETERSON: Yes, ma'am.

11 THE COURT: Okay. Well, I like that approach because  
12 I do want to get that pinned down.

13 Once we do get that in some kind of shape, then we can  
14 address the issue of his failure to comply with discovery, and  
15 in his kind of -- what is he then doing to otherwise defend as  
16 contemplated by Rule 55.

17 But until we get that pinned down, I prefer to defer  
18 that issue.

19 MR. KLOSS: Sure. And since there's a cross-claim, is  
20 that going to fall in the same bucket?

21 THE COURT: Yes.

22 MR. KLOSS: Okay.

23 THE COURT: Yes. I would put both claims against him  
24 in the same bucket because, in my mind, reducing any ultimate  
25 amount recovered from a civil case is defending -- is, in my

1 mind, defending the case.

2 But, like I said, I'm happy to hear from either of you  
3 or, frankly, if any of you have any other thoughts or  
4 suggestions of how we approach that and -- and get the case  
5 moving forward.

6 MR. KLOSS: No. I -- I think that covers it from my  
7 perspective.

8 I mean, the next issue we'll have to deal with, if we  
9 were to go there, is ultimately deposition -- deposing him and  
10 the logistics of that.

11 THE COURT: Right.

12 MR. KLOSS: But I'm not sure that discussion is for  
13 today.

14 THE COURT: All right. Okay. Well, I will say we  
15 might want to think about that sooner rather than later too, in  
16 part, because I am told -- you might have a different  
17 opinion -- that Butler County now does have decent video  
18 capability.

19 And so, if you want to depose him, we could arrange a  
20 video deposition, I think, with him in Butler County.

21 And so, that might be something we want to do sooner  
22 rather than later, because if he does get transferred into the  
23 Bureau of Prisons, that might be harder.

24 Do you --

25 MR. PETERSON: I would agree with that, Judge, and one

1 sort of -- I imagine the response you guys are going to get  
2 from him is: "I don't have any of these documents."

3 MR. KLOSS: That's what I think.

4 MR. PETERSON: We have his phones and his computer and  
5 his laptop. We made an image -- we have a hard drive that's  
6 one of the big thick ones that has all of his electronic  
7 information stored on it. We've imaged all of that.

8 As much as everyone wants the receiver to step out of  
9 this fight, we do have possession of those, and we certainly  
10 will comply with however you direct us to provide that  
11 wherever.

12 The interesting issue, I guess, is if, for example, an  
13 interrogatory asks for specific documents, we're not going to  
14 be able to sort through all of that and find, you know, and  
15 respond in -- in what I would consider an appropriate way for  
16 each discovery demand, but I imagine everybody would want to  
17 look at all of that volume of stuff and try to find it  
18 themselves.

19 THE COURT: Okay. And that hasn't been produced?

20 MR. KLOSS: We have --

21 MR. PETERSON: They have the hard drive. We're  
22 happy to -- we probably would just seek some kind of a  
23 protective order from the Court that we aren't -- I don't -- we  
24 don't want to be turning over something we're not supposed to  
25 be turning over, but it's practically impossible for us to look

1 through it and make sure that we're not.

2 MR. KLOSS: That applies for us, too.

3 I mean, we have it, and there's been a bit of a stutter  
4 step as to "I don't want to find us in a pickle."

5 I can't imagine, given what he's done, we would be in a  
6 pickle for reviewing it, but goodness only knows what's on  
7 there.

8 THE COURT: Okay. And I also think, though, that  
9 under -- I mean, some of the things that occur to me that might  
10 be on there, like just for -- I don't know that he's had any  
11 privileged communications. He's had a lawyer for only a  
12 minute. But you all know your professional responsibility  
13 requirements if you come across something that's privileged  
14 that is -- would be -- that I would probably consider  
15 inadvertently produced.

16 MR. PETERSON: These are -- as most of our devices  
17 probably are, I mean, his business and his personal lives are  
18 all -- and these are phones.

19 I mean, we have pictures of his little kids, and there's  
20 all kinds -- and I have no idea -- you know, every time you  
21 click, you kind of hold your breath because you don't know what  
22 that next picture is going to be, and so it's a little  
23 concerning.

24 MR. KLOSS: Given some of the stuff that's been  
25 found --

1 MR. PETERSON: Yeah.

2 MR. KLOSS: -- there is cause for concern.

3 MR. PETERSON: There is reason to be concerned.

4 THE COURT: Well, I -- let's do this, if -- and I'll  
5 kind of look at the two lawyers, as opposed to the receiver,  
6 why don't you two talk about what kind of protective order  
7 might be appropriate to address this information that the  
8 receiver has, so we can get it to you, Mr. Ridings.

9 It sounds like you've already seen some of it, and I  
10 will certainly put on an appropriate order just addressing it.

11 MR. KLOSS: We already have a protective order in  
12 place --

13 THE COURT: Oh, we do?

14 MR. KLOSS: -- that we could just make all of this --  
15 I don't remember. There's -- there's labeling requirements.

16 I haven't -- it's a -- we could just make it all subject  
17 to the -- is there an attorneys eyes only?

18 MR. RIDINGS: I think there is a level. Yeah. And  
19 there's a 502.

20 THE COURT: But nobody is going to be -- but nobody is  
21 going to be labeling this.

22 MR. KLOSS: No. We could -- we could -- I guess we  
23 could just accept it as to at least the lower tier.

24 MR. RIDINGS: Yeah. I think --

25 THE COURT: I'll tell you what, we'll put on an order

1 coming out of this conference -- it will just come from the  
2 Court -- that pursuant to the conversation at the status  
3 conference, the materials produced by the receiver that came  
4 from Mr. Silver's files and computers and phones are subject to  
5 the protective order without having to be designated as such.

6 MR. KLOSS: Okay.

7 MR. RIDINGS: Okay.

8 MR. KLOSS: That's fine. Yeah.

9 THE COURT: Okay.

10 MR. KLOSS: I think that gives us any cover fire in  
11 case there's stuff on there that we -- who knows. I refuse to  
12 speculate what might be on there.

13 THE COURT: Probably wise.

14 But -- but let's -- why don't do this: Since you have  
15 it -- you will have it soon, Mr. Ridings -- take some time to  
16 go through that, and then with the goal of scheduling a  
17 deposition of Mr. Silver, I'll say in the next month -- few  
18 months -- do you have any sense of when he might be sentenced  
19 by the chief?

20 MR. PETERSON: I know that the plea agreement has been  
21 filed. I don't know when the sentencing would be.

22 I think they are going through the presentence report  
23 process right now.

24 We would -- so, when we -- we received these devices --  
25 and what was compelling about them is they were collected in

1 security -- if you recall, Judge, he was arrested coming  
2 through security. Those devices were collected, and then a  
3 laptop was sent to Phil Templeton, and he turned all that over  
4 to us.

5 We then turned it over to our IT people that we had  
6 engaged to put all of this on one searchable storage device,  
7 which we did.

8 There is probably -- as you guys had to go through, it's  
9 very challenging to access this information. You know, there's  
10 different platforms. There's different -- all kinds.

11 We would be more than happy to provide the guidance from  
12 our IT people, who created it, to help you look at it --  
13 because information isn't valuable at all if you can't digest  
14 it.

15 And so to the extent, if there is a protective order  
16 with regards to the information itself, if we could sort of  
17 include something that we will provide the necessary IT support  
18 to explain to them how to access what we had created.

19 THE COURT: Okay. And you still have the -- the  
20 originals.

21 MR. PETERSON: Yes, ma'am.

22 THE COURT: So that if there's also an issue with the  
23 originals, then the receiver is going to maintain that.

24 MR. PETERSON: Yes, ma'am.

25 THE COURT: Okay.



1 MR. PETERSON: And it did -- in order to create this  
2 document, it took several days. It might have even been a few  
3 weeks of downloading, 'cause there's at least two iPhones.  
4 There's a laptop.

5 MR. GAJARY: There's, like, 20-some emails, email  
6 accounts.

7 MR. PETERSON: Yeah. Just the number of email  
8 addresses was staggering. And the text message -- it is a  
9 massive amount of information.

10 So it took a long time to create, and I would imagine  
11 equally as long and difficult to digest, which they have  
12 already tried to do.

13 MS. ALEXANDER: We -- we have it. We have not yet  
14 looked at it because we wanted to have this discussion and  
15 ensure it was all available to everybody.

16 But, yes, we at least got it open and noticed that the  
17 file structures are tricky.

18 MR. PETERSON: It is tricky.

19 If you would direct us, Judge, maybe we could just have  
20 one conference call with all the parties and say look -- and  
21 have our guy available and say, look, this is how you can  
22 actually use the information that you have.

23 THE COURT: I think that would be a good use of  
24 everybody's time so --

25 MR. PETERSON: Yes, ma'am. We can do that.

1 THE COURT: Okay. Thank you.

2 All right. On that topic, when I talk about everybody,  
3 I do note, and I missed this when we did appearances, that  
4 Ms. McDaniel did enter -- have counsel enter an appearance.

5 They are obviously not here. We have not heard from  
6 them.

7 Is anybody in communication with Ms. McDaniel's  
8 counsel?

9 MR. KLOSS: I had a brief conversation when the --  
10 right around the time period when the appearance was made.

11 THE COURT: Okay.

12 MR. KLOSS: And I thought he was going to be here.

13 He asked -- he had some questions about the details of  
14 the case and about his client's participation in the case,  
15 but that -- but that's all I had.

16 THE COURT: Okay.

17 MR. KLOSS: That was really at or about -- for all  
18 intents or purposes -- at or about the time the appearance was  
19 filed.

20 THE COURT: So you haven't tried to get information --  
21 have them get information or discovery from Ms. McDaniel for  
22 you?

23 MR. KLOSS: She provided me -- before she was  
24 represented by counsel -- not much, but something.

25 THE COURT: Okay. Okay. Do we need to do anything to

1 address her role, involvement to -- and, really, to -- is your  
2 cross-claim against Ms. McDaniel as well?

3 MR. RIDINGS: No, Your Honor.

4 THE COURT: So it's really your claim against her.

5 MR. KLOSS: Yeah. I -- I think we need to see where  
6 it -- well, we know where this is going against Mr. Silver.

7 THE COURT: Right.

8 MR. KLOSS: I think this primary dispute, if we're  
9 going to put a head on it, is with these guys, is Quantasy at  
10 this point.

11 THE COURT: Yeah.

12 MR. KLOSS: And we've -- Matt and I have had a number  
13 of conversations. We've discussed -- we made a settlement  
14 demand.

15 We've discussed potentially resolving it, but there was  
16 discussion about mediation, so -- and that's been our focus, if  
17 I'm going to be entirely honest.

18 THE COURT: Great. Okay. I'm glad to hear it.  
19 Mediation is always good.

20 MR. KLOSS: Yeah. Well, we haven't gotten there yet.

21 So -- and we haven't -- we haven't agreed to one yet,  
22 but -- so I think our focus is going to continue on that  
23 because, in the end, Ms. McDaniel, I'm not sure entirely what  
24 her role was, and she's not going to be collectible anyway.

25 THE COURT: Probably not, from what I've seen. That

1 doesn't appear -- okay.

2 MS. ALEXANDER: One issue, Your Honor, with McDaniel  
3 and Silver, and it ties into perhaps this protective order,  
4 neither of them have signed the protective order, and so we  
5 have been a little bit in limbo as to what we send to them as  
6 we were getting, you know, subpoenaed docket bank records, and  
7 things like that, that we would typically share marked  
8 confidential with all parties in the case or sealed filings.

9 We had a motion to quash that involved some sealed  
10 filings with bank records.

11 THE COURT: Okay.

12 MS. ALEXANDER: And so we're looking for a little  
13 direction from the Court on how to best handle that because we  
14 are concerned about sending things like that to Butler County  
15 or --

16 THE COURT: Yeah. I would be concerned about you  
17 sending them to Butler County.

18 Yeah. My suggestion would be that you don't send it  
19 to -- and I -- and we can -- if you would be more comfortable,  
20 we can put that in the order as well as, at this point, you are  
21 not to share with Mr. Silver directly while he's in  
22 Butler County or with Ms. McDaniel unless and until her lawyers  
23 sign on to the protective order and then --

24 MS. ALEXANDER: That would be great.

25 MR. KLOSS: That would be great. I don't want to have

1 anybody spring up and say you denied us access to this  
2 information.

3 THE COURT: Right. Right. And I think you are  
4 denying pursuant to the court order, and if they -- and we'll  
5 put in there language that if they sign on to the protective  
6 order, we'll revisit it.

7 MR. KLOSS: The notion of bank records going into  
8 Butler County amazes me --

9 THE COURT: Well, he's got 23 hours a day there to be  
10 sitting in his cell. He probably would enjoy the reading.

11 MR. KLOSS: The question is how many hours a day or  
12 how many hours a week does he have access to a computer --  
13 which really frightens me.

14 THE COURT: Okay. So that -- so that kind of, I  
15 think, at least gives us a pin, and -- and to the extent that I  
16 suggested about thinking of deposing Mr. Silver, we can  
17 probably get a little bit of information.

18 Do you want to talk to Mr. Glenn-Applegate and just let  
19 counsel know an approximate timeline?

20 MR. PETERSON: Yes, ma'am.

21 THE COURT: Okay. It looks like you two are working  
22 well together in terms of getting Root's answer to the  
23 counterclaim from Quantasy, so that's --

24 MR. KLOSS: Well, that is one issue I would like to --  
25 I would like to address.

1 THE COURT: Okay.

2 MR. KLOSS: We're going to -- as I suspect the Court  
3 will not be surprised, we're going to file a motion to dismiss  
4 the counterclaim. We're going to need some more time.

5 We would like -- we have the original deadline as 2/21.  
6 We would like to get it to -- push it to 3/22, if that's not --

7 MR. RIDINGS: Yeah. That's not an issue at all.

8 MR. KLOSS: Okay. Do you want us to file a motion  
9 or --

10 THE COURT: We'll put it in the order.

11 MR. KLOSS: Okay.

12 THE COURT: We'll do kind of an omnibus order coming  
13 out of this. Great.

14 Anything else on that?

15 You mentioned mediation. You haven't agreed to it yet.

16 Is there anything I can do to facilitate the discussions  
17 or mediation?

18 MR. RIDINGS: Your Honor, the -- I'll -- I'll speak to  
19 that --

20 MR. KLOSS: Sure.

21 MR. RIDINGS: -- and Bill can chime in if there's  
22 anything else he would like to say. But, yes, we, I think,  
23 would like to go to mediation.

24 We have an insurance issue right now. We have an  
25 insurance company that has tentatively decided to cover, with a

1 reservation of rights.

2 We've had, I would say, a fair bit of difficulty in  
3 getting the insurance company to respond and substantively  
4 participate.

5 THE COURT: Who is the insurer?

6 MR. RIDINGS: The insurer is a company called Tokyo  
7 Marine.

8 THE COURT: Okay.

9 MR. RIDINGS: The -- Mr. Kloss is -- we've been  
10 speaking with this -- and with some frequency over the last  
11 several months, and we have recently held -- they -- we had a  
12 conference with the insurer, a video conference, where we've  
13 discussed this and have expressed to the insurer that  
14 this needs to be accomplished like now, and we need -- we need  
15 to get a move on because this is -- you know, the case is  
16 really starting to move, and this is the time if there's going  
17 to be an early resolution for this.

18 THE COURT: Yeah.

19 MR. RIDINGS: So the insurance company, as it is, has  
20 said they understand this.

21 I just sent an email to the insurer again yesterday in  
22 advance of this conference saying: Have you made a decision?  
23 Please let us know. We need to know.

24 I haven't checked my email this morning. I was driving  
25 down, but I did not receive a response to that email yesterday.

1 But we are putting all the pressure we can on the  
2 insurance company to get them to participate in this because  
3 that will materially make a difference --

4 THE COURT: Sure.

5 MR. RIDINGS: -- to settlement negotiations.

6 But we have -- you know, I recognize and have expressed  
7 to everyone that Root's patience for this is not infinite, and  
8 we are doing everything we can to make that happen.

9 THE COURT: Okay.

10 MR. KLOSS: Matt's summary is entirely correct.

11 The only thing I would add to it is this -- because I  
12 want the Court to know the position that I took.

13 We originally made a settlement demand -- I don't  
14 remember when it was. It's been a while ago. Probably back in  
15 December-ish, December, January-ish.

16 There was a delay due to the inability to engage the  
17 insurer. The response was -- then this was pre-decision on the  
18 summary -- on the motion to dismiss.

19 The response was we don't -- we like our case, and we  
20 would be willing to mediate, but there was no -- we made an X  
21 demand. They didn't make a Y offer.

22 My response was there's a time and a place for  
23 mediation, in my experience, but it's usually after we at  
24 least have -- Matt's able counsel, at least we have some  
25 preliminary negotiations to see how broad the gap and how wide



1 the gap is.

2 That has continued to be my position.

3 We had some -- I had some follow-up correspondence. I  
4 talked about using Frank Ray or Jim Arnold as a potential  
5 mediator. I thought both were decent choices, better than  
6 decent choices, to be quite honest, but still I think it would  
7 be helpful, probably to Matt's and -- an order of a deadline  
8 for mediation, but it would be helpful for me to get a response  
9 in terms of dollars and cents as to whether it's even -- even a  
10 response I don't care for.

11 So I just add that to the -- to the mix there.

12 THE COURT: Okay.

13 MR. RIDINGS: And I just will say, I mean, the reason  
14 we can -- we can provide a response, but I just don't know if  
15 that response is going to be helpful in terms of -- I mean, we  
16 know there's a \$5 million insurance policy out there, and we  
17 don't know from our perspective whether the insurer is going to  
18 contribute zero dollars or \$5 million to the pool of  
19 settlement.

20 And so, I mean, that -- that, to me, makes a material  
21 difference in what sort of offer we'll be able to make to  
22 resolve the case.

23 If -- I mean, Bill -- and if you would like us to say,  
24 look, please give us an offer, understanding that we don't have  
25 final decision from the insurance company, I'm certainly -- I'm

1 certainly willing to do that to move it along.

2 THE COURT: Would it be helpful if -- I'll be honest.  
3 I did not review your counterclaim.

4 Would it be helpful to have a motion to dismiss the  
5 counterclaim for the insurance company or for your -- from your  
6 perspective going into mediation?

7 MR. RIDINGS: I don't -- from -- no. I don't think  
8 so.

9 I mean, I think we're -- I think I certainly understand  
10 what Mr. Kloss is going to argue in his motion to dismiss.

11 I don't think there's going to be any surprises in terms  
12 of what he's going to say.

13 THE COURT: Well, how about this then: What if we  
14 stay briefing, responding -- any responses to your filing  
15 until -- I am going to pick a date -- April 15th, with the  
16 order that you either respond to the settlement demand or  
17 schedule mediation within 30 days of today.

18 MR. RIDINGS: That would be acceptable to us,  
19 Your Honor, if --

20 THE COURT: That's why I say, schedule. Not have the  
21 mediation within 30 days, but schedule it, because I know the  
22 two mediators that you are talking about are going to be hard  
23 to get on their calendar.

24 But if you -- if you can get it scheduled in the spring  
25 but get it scheduled in the next 30 days, and that will put a

1 little -- at least put some timing for your purposes of -- I do  
2 want this case to move forward. It's already a year old.

3 We're going to -- the receiver does have an end in sight  
4 for wrapping up.

5 And so, that really does leave you two as the primary  
6 parties. So I would like to make that happen sooner rather  
7 than later.

8 MR. RIDINGS: Yes, Your Honor. We agree.

9 And as I've -- as I've told Mr. Kloss, you know, my  
10 client has a business to run, and so he would like to -- he  
11 would like to get this wrapped up sooner rather than later too.

12 So that's acceptable to us, Your Honor, if it is to  
13 Mr. Kloss.

14 MR. KLOSS: That -- that's fine.

15 THE COURT: Okay.

16 MR. KLOSS: My concern is -- is, I guess, in the face  
17 of the mediation, I've got to put confidence in the fact that  
18 the insurer is going to wake up and is going to come with  
19 something.

20 I don't want to -- I don't want to delay this case, and  
21 then -- what I'm fearful of is if we have -- what we face now  
22 is a demand that is not particularly or, excuse me, an offer,  
23 which is not a particularly decent offer, that that's -- we're  
24 just kicking it down the road, and if I'm going -- I'm going to  
25 start a mediation with something that's not a particularly good

offer, I would rather get that process over with.

THE COURT: Well, and that's why -- and that's why -- and just so maybe I'll amend the scheduling order to say either schedule the mediation in 30 days or if the -- if the -- if there's not going to be serious negotiations, I want to know that, and we'll get into the case.

MR. RIDINGS: Yeah. And, Your Honor, you know, I will -- you know, I think Mr. Kloss and I have had a good working relationship in this case, and I will be -- look, if I think this isn't going to happen, I'm going to be frank with you, Bill.

MR. KLOSS: I have absolute confidence in that. No hesitation in that whatsoever.

THE COURT: Okay. Well, let's give it that 30 days then to -- for you to have those discussions. And if you come back to me during that time period and say the mediation isn't going to pan out, that's fine. We'll move forward with the case schedule.

MR. KLOSS: Okay.

MR. RIDINGS: Okay.

THE COURT: I think the only thing that leaves is -- I know there's been -- you have had some discussions with Judge Deavers about discovery issues.

Frankly, I would prefer to keep those on her part of the plate.

1           MR. KLOSS: That's what my checklist says is going to  
2 be your likely response.

3           THE COURT: Yes.

4           She's already started, and I don't want to step on her  
5 toes, and she's very capable.

6           So unless there's anything specific you think would be  
7 helpful for -- in the context of this overall discussion --

8           MR. KLOSS: No. I think that -- I think we're --  
9 we're okay for that.

10          THE COURT: Okay. All right.

11          MR. PETERSON: Can I go back to the deposition real  
12 quick, Judge?

13          THE COURT: You may.

14          MR. PETERSON: I have some -- I've been texting back  
15 and forth with Phil.

16          They did a psychological evaluation, and they are  
17 waiting on the results of that to come back.

18          THE COURT: Okay.

19          MR. PETERSON: That then will trigger the final PSR  
20 being filed.

21          And I asked him is Silver willing to be deposed, and he  
22 said, hmm, we could talk about that.

23          I don't have -- I am assuming he is going to be pursuing  
24 an acceptance reduction in the guidelines in his criminal case.

25          I wouldn't have any problem, and I had expected to write

1 in a letter to Judge Marbley about what his cooperation is, and  
2 explain to Phil that, in order for that to be complete  
3 cooperation, he's got to do a deposition in the civil case.  
4 That would be included.

5 And he agreed, and so I will continue to pursue that and  
6 do everything we can to --

7 THE COURT: In the Jakarta account, right?

8 MR. PETERSON: Yes, ma'am.

9 THE COURT: Okay. Okay. Great. I like when you get  
10 that kind of response. Great.

11 So that was all I had on my agenda.

12 Anything else that we ought to talk about from the  
13 receiver's or counsel's standpoint?

14 MR. PEER: The only thought I had, Your Honor, is that  
15 there may be some benefit in making sure the deposition occurs  
16 before we terminate the receivership in the event something  
17 does come out about more assets --

18 THE COURT: Great.

19 MR. PEER: -- or any concerns, so we don't go through  
20 a reappointment process.

21 THE COURT: Okay. That's probably wise. Okay.

22 Mr. Kloss, anything?

23 MR. KLOSS: No, ma'am.

24 THE COURT: Mr. Ridings?

25 MR. RIDINGS: No, Your Honor.

THE COURT: All right. Thank you all. I feel like we've accomplished a lot, slowly but surely, I'm sure, from Root's standpoint, but we're getting there.

MR. KLOSS: Yeah.

THE COURT: Great. All right. Thank you all who are on the phone. I'm going to hang up.

MR. EPSTEIN: Thank you, Your Honor.

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(Proceedings concluded at 10:40 a.m.)

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C E R T I F I C A T E

I, Allison A. Kimmel, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Sarah D. Morrison, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Allison A. Kimmel  
Allison A. Kimmel, FAPR, RDR, CRR, CRC  
Official Federal Court Reporter  
February 16, 2024